

E2SHB 1935 - S AMD 448

By Senators Keiser, Pflug

ADOPTED 04/22/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.128.040 and 2007 c 184 s 8 are each amended to
4 read as follows:

5 (1) The department shall adopt rules and standards with respect to
6 adult family homes and the operators thereof to be licensed under this
7 chapter to carry out the purposes and requirements of this chapter.
8 The rules and standards relating to applicants and operators shall
9 address the differences between individual providers and providers that
10 are partnerships, corporations, associations, or companies. The rules
11 and standards shall also recognize and be appropriate to the different
12 needs and capacities of the various populations served by adult family
13 homes such as but not limited to persons who are developmentally
14 disabled or elderly. In developing rules and standards the department
15 shall recognize the residential family-like nature of adult family
16 homes and not develop rules and standards which by their complexity
17 serve as an overly restrictive barrier to the development of the adult
18 family homes in the state. Procedures and forms established by the
19 department shall be developed so they are easy to understand and comply
20 with. Paper work requirements shall be minimal. Easy to understand
21 materials shall be developed for applicants and providers explaining
22 licensure requirements and procedures.

23 (2)(a) In developing the rules and standards, the department shall
24 consult with all divisions and administrations within the department
25 serving the various populations living in adult family homes, including
26 the division of developmental disabilities and the aging and adult
27 services administration. Involvement by the divisions and
28 administration shall be for the purposes of assisting the department to
29 develop rules and standards appropriate to the different needs and
30 capacities of the various populations served by adult family homes.

1 During the initial stages of development of proposed rules, the
2 department shall provide notice of development of the rules to
3 organizations representing adult family homes and their residents, and
4 other groups that the department finds appropriate. The notice shall
5 state the subject of the rules under consideration and solicit written
6 recommendations regarding their form and content.

7 (b) In addition, the department shall engage in negotiated rule
8 making pursuant to RCW 34.05.310(2)(a) with the exclusive
9 representative of the adult family home licensees selected in
10 accordance with RCW 70.128.043 and with other affected interests before
11 adopting requirements that affect adult family home licensees.

12 (3) Except where provided otherwise, chapter 34.05 RCW shall govern
13 all department rule-making and adjudicative activities under this
14 chapter.

15 (4) The department shall establish a specialty license to include
16 geriatric specialty certification for providers who have successfully
17 completed the University of Washington school of nursing certified
18 geriatric certification program and testing.

19 **Sec. 2.** RCW 70.128.005 and 2001 c 319 s 1 are each amended to read
20 as follows:

21 (1) The legislature finds that:

22 (a) Adult family homes are an important part of the state's long-
23 term care system. Adult family homes provide an alternative to
24 institutional care and promote a high degree of independent living for
25 residents.

26 (b) Persons with functional limitations have broadly varying
27 service needs. Adult family homes that can meet those needs are an
28 essential component of a long-term system. ((The legislature further
29 finds that)) Different populations living in adult family homes, such
30 as ((the — developmentally — disabled)) persons with developmental
31 disabilities and ((the)) elderly persons, often have significantly
32 different needs and capacities from one another.

33 (c) There is a need to update certain restrictive covenants to take
34 into consideration the legislative findings cited in (a) and (b) of
35 this subsection; the need to prevent or reduce institutionalization;
36 and the legislative and judicial mandates to provide care and services
37 in the least restrictive setting appropriate to the needs of the

1 individual. Restrictive covenants which directly or indirectly
2 restrict or prohibit the use of property for adult family homes (i) are
3 contrary to the public interest served by establishing adult family
4 homes and (ii) discriminate against individuals with disabilities in
5 violation of RCW 49.60.224.

6 (2) It is the legislature's intent that department rules and
7 policies relating to the licensing and operation of adult family homes
8 recognize and accommodate the different needs and capacities of the
9 various populations served by the homes. Furthermore, the development
10 and operation of adult family homes that can provide quality personal
11 care and special care services should be encouraged.

12 (3) The legislature finds that many residents of community-based
13 long-term care facilities are vulnerable and their health and well-
14 being are dependent on their caregivers. The quality, skills, and
15 knowledge of their caregivers are the key to good care. The
16 legislature finds that the need for well-trained caregivers is growing
17 as the state's population ages and residents' needs increase. The
18 legislature intends that current training standards be enhanced.

19 (4) The legislature finds that the state of Washington has a
20 compelling interest in protecting and promoting the health, welfare,
21 and safety of vulnerable adults residing in adult family homes. The
22 health, safety, and well-being of vulnerable adults must be the
23 paramount concern in determining whether to issue a license to an
24 applicant, whether to suspend or revoke a license, or whether to take
25 other licensing actions.

26 NEW SECTION. Sec. 3. A new section is added to chapter 70.128 RCW
27 to read as follows:

28 (1) To effectuate the public policies of this chapter, restrictive
29 covenants may not limit, directly or indirectly:

30 (a) Persons with disabilities from living in an adult family home
31 licensed under this chapter; or

32 (b) Persons and legal entities from operating adult family homes
33 licensed under this chapter, whether for-profit or nonprofit, to
34 provide services covered under this chapter. However, this subsection
35 does not prohibit application of reasonable nondiscriminatory
36 regulation, including but not limited to landscaping standards or

1 regulation of sign location or size, that applies to all residential
2 property subject to the restrictive covenant.

3 (2) This section applies retroactively to all restrictive covenants
4 in effect on the effective date of this section. Any provision in a
5 restrictive covenant in effect on or after the effective date of this
6 section that is inconsistent with subsection (1) of this section is
7 unenforceable to the extent of the conflict.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38 RCW
9 to read as follows:

10 (1) To effectuate the public policy of chapter 70.128 RCW, the
11 governing documents may not limit, directly or indirectly:

12 (a) Persons with disabilities from living in an adult family home
13 licensed under chapter 70.128 RCW; or

14 (b) Persons and legal entities from operating adult family homes
15 licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to
16 provide services covered under chapter 70.128 RCW. However, this
17 subsection does not prohibit application of reasonable
18 nondiscriminatory regulation, including but not limited to landscaping
19 standards or regulation of sign location or size, that applies to all
20 residential property subject to the governing documents.

21 (2) This section applies retroactively to any governing documents
22 in effect on the effective date of this section. Any provision in a
23 governing document in effect on or after the effective date of this
24 section that is inconsistent with subsection (1) of this section is
25 unenforceable to the extent of the conflict.

26 **Sec. 5.** RCW 70.128.060 and 2004 c 140 s 3 are each amended to read
27 as follows:

28 (1) An application for license shall be made to the department upon
29 forms provided by it and shall contain such information as the
30 department reasonably requires.

31 (2) Subject to the provisions of this section, the department shall
32 issue a license to an adult family home if the department finds that
33 the applicant and the home are in compliance with this chapter and the
34 rules adopted under this chapter, unless (a) the applicant or a person
35 affiliated with the applicant has prior violations of this chapter
36 relating to the adult family home subject to the application or any

1 other adult family home, or of any other law regulating residential
2 care facilities within the past five years that resulted in revocation,
3 suspension, or nonrenewal of a license or contract with the department;
4 or (b) the applicant or a person affiliated with the applicant has a
5 history of significant noncompliance with federal, state, or local
6 laws, rules, or regulations relating to the provision of care or
7 services to vulnerable adults or to children. A person is considered
8 affiliated with an applicant if the person is listed on the license
9 application as a partner, officer, director, resident manager, or
10 majority owner of the applying entity, or is the spouse of the
11 applicant.

12 (3) The license fee shall be submitted with the application.

13 (4) The department shall serve upon the applicant a copy of the
14 decision granting or denying an application for a license. An
15 applicant shall have the right to contest denial of his or her
16 application for a license as provided in chapter 34.05 RCW by
17 requesting a hearing in writing within twenty-eight days after receipt
18 of the notice of denial.

19 (5) The department shall not issue a license to a provider if the
20 department finds that the provider or spouse of the provider or any
21 partner, officer, director, managerial employee, or majority owner has
22 a history of significant noncompliance with federal or state
23 regulations, rules, or laws in providing care or services to vulnerable
24 adults or to children.

25 (6) The department shall license an adult family home for the
26 maximum level of care that the adult family home may provide. The
27 department shall define, in rule, license levels based upon the
28 education, training, and caregiving experience of the licensed provider
29 or staff.

30 (7) The department shall establish, by rule, standards used to
31 license nonresident providers and multiple facility operators.

32 (8) The department shall establish, by rule, for multiple facility
33 operators educational standards substantially equivalent to recognized
34 national certification standards for residential care administrators.

35 (9) The license fee shall be set at (~~(fifty)~~) one hundred dollars
36 per year for each home. (~~(A-fifty)~~) An eight hundred dollar processing
37 fee shall also be charged each home when the home is initially

1 licensed. The processing fee will be applied toward the license
2 renewal in the subsequent three years. A five hundred dollar rebate
3 will be returned to any home that renews after four years in operation.

4 (10) A provider who receives notification of the department's
5 initiation of a denial, suspension, nonrenewal, or revocation of an
6 adult family home license may, in lieu of appealing the department's
7 action, surrender or relinquish the license. The department shall not
8 issue a new license to or contract with the provider, for the purposes
9 of providing care to vulnerable adults or children, for a period of
10 twenty years following the surrendering or relinquishment of the former
11 license. The licensing record shall indicate that the provider
12 relinquished or surrendered the license, without admitting the
13 violations, after receiving notice of the department's initiation of a
14 denial, suspension, nonrenewal, or revocation of a license.

15 (11) The department shall establish, by rule, the circumstances
16 requiring a change in the licensed provider, which include, but are not
17 limited to, a change in ownership or control of the adult family home
18 or provider, a change in the provider's form of legal organization,
19 such as from sole proprietorship to partnership or corporation, and a
20 dissolution or merger of the licensed entity with another legal
21 organization. The new provider is subject to the provisions of this
22 chapter, the rules adopted under this chapter, and other applicable
23 law. In order to ensure that the safety of residents is not
24 compromised by a change in provider, the new provider is responsible
25 for correction of all violations that may exist at the time of the new
26 license.

27 NEW SECTION. **Sec. 6.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected."

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1 On page 1, line 1 of the title, after "homes;" strike the remainder
2 of the title and insert "amending RCW 70.128.040, 70.128.005, and
3 70.128.060; adding a new section to chapter 70.128 RCW; and adding a
4 new section to chapter 64.38 RCW."

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